IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No.1190 of 2007

Akhil Bharatiya Adivasi Vikas
Parishad and anr ..Petitioners.

vs

State Election Commissioner and ors ..Respondents

Mr. M.P. Vashi i/b Mr. L.M. Acharya for petitioners.
Mr. Sachin Shetye for State Election Commission.
Mr. Ravi Kadam, Advocate General, with Mr. V.M. Malvankar, AGP for respondent State.

With Writ Petition No.1205 of 2007

Shri Sunil Bhausaheb Gaikwad ..Petitioner.

vs

The State of Maharashtra and ors ..Respondents

Mr. A.V. Anturkar i/b Mr.S.B. Deshmukh for petitioner.
Mr. Sachin Shetye for State Election Commission.
Mr. Ravi Kadam, Advocate General, with Mr. V.M. Malvankar, AGP for respondent State.

With Writ Petition No.1188 of 2007

Shri Vijay Eknath Gangode and ors ..Petitioners.

vs

The State of Maharashtra and ors ..Respondents

Mr. P.N. Joshi for the petitioners.
Mr. Sachin Shetye for State Election Commission.
Mr. Ravi Kadam, Advocate General, with Mr. V.M. Malvankar, AGP for respondent State.

With Writ Petition No.1189 of 2007

Shri Subhash Ramu Choudhary ..Petitioner.

vs

The State of Maharashtra and ors ..Respondents

Mr. S. M. Sabrad for petitioner.
Mr. Sachin Shetye for State Election Commission.
Mr. Ravi Kadam, Advocate General, with Mr. V.M. Malvanar, AGP for respondent State.

With Writ Petition No.1206 of 2007

Shri Prabhakar Sopan Todakr ..Petitioner.

vs

The Election Commissioner and ors ..Respondents

Mr. R.K. Singh for petitioner.
Mr. Sachin Shetye for State Election Commission.
Mr. Ravi Kadam, Advocate General, with Mr. V.M. Malvanar, AGP for respondent State.

CORAM: H.L. GOKHALE,Acg.C.J. ,&
V.M.KANADE, J.
DATE: February 21, 2007.

P.C.:-

1. These writ petitions challenge the ensuing elections to the Zilla Parishad and Panchayats. We have fully heard the counsel for the parties on 21st February 2007. The Court was informed that petitions are filed in the Apex Court also wherein

similar questions are raised and that the matter was to come up before the Apex Court on 26th February 2007. Hence, the following order was passed on that day:-

"Adjourned to 27-2-2007 for orders. No interim reliefs."

2. On 27th February 2007, this Court was informed that the matters in the Apex Court have been adjourned to Friday, the 2nd March 2007 and, therefore, these petitions were once again adjourned to 5th March 2007. Today, we are told that the petitions filed in the Apex Court have been dismissed as withdrawn and hence we pronounce the order on these petitions which is as follows:-

3. All these petitions raise a grievance with respect to the election to the Zilla Parishad in the State of Maharashtra which is being held in February/March 2007. All the petitioners have their own grievances. However, since all are concerning the Zilla Parishad election, they are being heard and decided together.

Writ Petition No.1190 of 2007:

4. The first petitioner in this petition is a society which claims to be working for the benefit of the tribals. The second petitioner is also another society working for the benefit of the Mahadeo Koli community which is a Scheduled Tribe. The grievance in the petition is that although our High Court in its judgment of Aurangabad Bench in Writ Petition No.5386 of 2006 rendered on 3rd October 2006 directed that the rule regarding rotation in reservation of seats ought to be followed in its letter and spirit, same is not being done by the Election Commission. Thus it is pointed out that in six wards of Zilla Parishad in Ahmednagar district, although the population of the tribals is overwhelming, the seats are not reserved for them. It is stated to be contrary to the requirement and purpose of reservation of seats for their community. Reliance is placed on clause (4) of a circular issued by the State Election Commissioner dated 10th February 2007, which directs that the number of seats reserved for persons belonging to Scheduled Castes and Scheduled Tribe shall be in proportion to the

population they have in a particular block of voters. This petition, therefore, seeks to challenge the formation and rotation of reserve seats. Reliance is also placed on Article 243D of the Constitution of India, which requires that when it comes to the election to the panchayat, seats reserved for Scheduled Caste and Scheduled Tribe shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that panchayat as the population of the Scheduled Castes in that panchayat area or of the Scheduled Tribes in that panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a panchayat. The petition, therefore, prays that appropriate directions be given in the matter of election to 27 Zilla Parishads and 310 panchayat samities in the entire State of Maharashtra. By way of interim relief the election notification dated 10th February 2007 is sought to be withdrawn by the Election Commissioner. Mr Vashi also drew our attention to the observations of the Apex Court in the case of Mohinder Singh Gill and anr vs The Chief Election Commissioner New Delhi and ors reported in AIR 1978 SC 851 wherein it was held that although in election matters

courts are not expected to interfere but in appropriate case some remedial measure can be resorted to.

Writ Petition No.1205 of 2007:

5. This petition is filed by a resident of Velha Taluka, Pune District. This taluka has two seats in Zilla Parishad and it is submitted that one of them i.e. Kuran Khurd is reserved for woman whereas the other is reserved for a person from OBC. The petitioner is stated to be belonging to the open category and his grievance is that both the seats of this taluka are not available to him. His submission his that the rotation principle is not followed correctly. Reliance is placed on rule 10 of the Maharashtra Zilla Parishad and Panchayat Samitee (Manner and Rotation of Reservation of Seats)Rules, 1966. It is submitted that in the earlier election also Kuran Khurd seat was reserved for women and now also it is reserved for women and thus there is breach of the requirement.

6. It is submitted that the rule 10 regarding rotation is defective. It provides for rotation of seats for various categories

such as Scheduled Castes, Scheduled Tribes, Women etc, but this rule is stated to be contrary to Article 243D(3). Whereas Article 243D(3) provides for rotation of seats meant for women also. Rule 10 does not prescribe it so specifically. This rule 10 (1) reads as follows:

> "10 Manner of allotment and rotation of seats reserved for women:-
>
> (1) The seats reserved for women,belonging to Scheduled Castes, Scheduled Tribes, or, as the case may be, Category of Backward Class of Citizens, under Rule 7 shall be allotted to the electoral colleges where the seats are reserved for such Castes, Tribes or the Classes, as the case may be, by drawing lots:
>
> Provided that, while drawing lots at the time of subsequent general elections, the electoral colleges, where such seats were already reserved in earlier elections for women belonging to such Castes, Tribes or the category, as the case may be, shall be excluded until all the electoral colleges

in which such seats are required to be reserved have been given such reservation by rotation".

Reliance is also placed on a couple of judgments of the Apex Court, firstly the observation in paragraph 16 of the judgment in the case of Harnek Singh vs Charanjit Singh and ors, reported in (2005) 8 SCC 383, which lays down that though Article 243D of the Constitution mandates that all election disputes must be determined only by way of an election petition, this by itself may not per se bar judicial review which is the basic structure of the Constitution. This view has been reiterated in paragraphs 28 and 29 of the judgment in the case of Avtar Singh Hit vs Delhi Sikh Gurdwara Management Committee and ors, reported in (2006) 8 SCC 487.

7. In this petition, two more points have been raised. One is with respect to the provision of 27% reservation to the OBCs and the other is not providing rotation to the open category woman. Mr.Anturkar for the Petitioners states that he may be granted liberty to raise these points in some other writ petition. In view of this statement, we record that these points are not

being canvassed and considered in this petition. As and when they are raised by the Petitioners, the appropriate court will look into them.

Writ Petition No.1188 of 2007:

8. This petition is filed by four residents of Taluka Dindori Peth and Niphad in Nasik District. It is contended on their behalf by Mr. Joshi, learned counsel appearing for them, that they are the residents of certain areas which are scheduled areas and Article 243M of the Constitution which deals with the election to the panchayat samitees, lays down that Part IX will not apply to the scheduled area. It is however, material to note that though there is general averment at the end of paragraph 1 of the petition that the petitioners wants to contest the election, it is not stated that they want to contest the election from a particular scheduled area.

Writ Petition No.1189 of 2007:

9. The grievance made in this petition are somewhat similar to those made in Writ Petition No.1188 of 2007. This petition is filed by a resident of Bawda Gat in Surgana Taluka, which is stated to be a village from scheduled area and yet the Election Commissioner has declared the seat for OBC.

Writ Petition No.1190 of 2007:

10. This petition is filed by a resident of village Manerajori in Taluka Tasgaon, District Sangli. His grievance is that he could not file his nomination in as much as in the electoral roll his name was not shown. This has happened for the first time in the electoral roll for the Zilla Parishad elections, when the electoral roll of the last election is taken as the basis. The earlier electoral roll showed the name of the petitioner. It is submitted that this vitiates the election.

11. The submissions of the learned counsel for the petitioners are countered by Mr. Shetye, learned counsel appearing for the State Election Commission. He pointed out that the election programme has already been started. Nomination papers are

being received from 20th February 2007 onwards, and therefore, at this stage it is not permissible to interfere with the same. In any case so far as the first petition i.e. Writ Petition No.1190 of 2007 is concerned, Mr. Shetye pointed out that there has been directions of the Division Bench at Aurangabad in Writ Petition No. 5386 of 2006 to follow rotation. Therefore, the constituencies are rotated and there may be some constituencies with large tribal population which are not reserved for tribals this time. He submitted that since these petitions were moved on urgent basis, he could not file reply but he stated that this has happened since in the previous year these constituencies must have been reserved for Scheduled Tribe. He submitted that under Article 243E of the Constitution the duration of the panchayat is for 5 years from its first meeting and no longer as prescribed in the Article itself. Therefore, the election is required to be held at the end of March 2007 with the formation of different constituencies. It is possible in this hurry some errors could have taken place here and there. He also placed reliance upon Article 243-O of the Constitution which specifically bars interference in electoral matters on two counts (a) question of validity relating to de-limitation of constituencies

and (b) that no question with respect to election to panchayats is to be raised except by election petition.

12. With respect of Writ Petition No.1205 of 2007 wherein both constituencies in Velha taluka were reserved either for woman or for OBC, the submission of Mr. Shetye is that this must have happened due to rotation only.

13. Even with respect to Writ Petition Nos. 1188 and 1189 of 2007, the submission on behalf of the Election Commissioner is that Scheduled Tribe are being given rotation and in rotational scheme, may be that some constituencies have gone to some other constituencies.

14. With respect to Writ Petition No. 1206 of 2007 Mr. Shetye submitted that there is no question of interfering with this petition since the petitioner's name did not figure in the electoral roll and the petitioner may file election petition after the election is over.

15. We have noted the submissions of the learned counsel for the parties. The law of election is very clear as held by the Apex Court way back in the case of N.P. Ponnuswami vs. The Returning Officer, Namakkal Constituency, Namakkal, Salem District an ors, reported in AIR 1952 SC 64, wherein the Apex Court observed as under:

> "The law of election in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means of an election petition. Any matter which has the effect of vitiating an election should be bought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court".

16. The mandate of Article 243D is very clear and the question of delimitation of constituencies or for whom they are to be reserved, cannot be called in question in a writ petition in view of Article 243-0(a) and the remedy is only by way of an election petition as laid down in Article 243-0(b). Even with respect to intermediate stages with regard to the name of a person being wrongly omitted from the voters list, in the context of an election to the market committee, the Division Bench of the Gujarat High Court in the case of Mehsana District Coop Sales and Purchase Union Ltd and Anr vs State of Gujarat and ors, reported in 1988(2) GLR 1061, has held held that the grievance that names of some persons have wrongly been omitted from the voters list can be made only after the result of the election is declared and not otherwise. Similarly in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha an anr vs State of Maharashtra and ors, reported in 2002(1) Mh. L.J. 659, in the context of an election of a cooperative society, the Apex Court has laid down that preparation of electoral roll for an election of a specified society under Chapter XIA of the Cooperative Societies Act and the Rules made thereunder is an

intermediate stage in the process of an election. If there is any breach of the rules in preparing the electoral roll, same can be called in question after the declaration of the result, by means of an election petition before the competent authority and not otherwise.

17. In the present case as far as the grievance that the electoral colleges are not being formed correctly is concerned, it is too late in the day to canvas it. The correctness of all assertions cannot be asserted, since the Election Commissioner cannot controvert it at the last moment. It is, therefore, difficult to come to a definite conclusion that there is any breach and the requirement would have been proper rotation for a particular community. However, the Election Commission has participated in the proceedings on the basis of denial, in as much as the petitions are filed at the last stage, it is not possible to come to any definite conclusion, without opportunity to the Election Commission.

18. That apart, the process of the election has already started. The nomination papers are being received from 20th

February 2007 onwards. This being the position, we cannot interfere in the electoral process by exercising writ jurisdiction under Article 226 of the Constitution of India.

19. We may add that in another public interest writ petition being Writ Petition(PIL)No.2 of 2007 which was filed on the eve of the election to the Mumbai Municipal Corporation, similar contention was raised that the rotational formula was not properly applied. We declined to interfere at the last stage by our order dated 19th January 2007 passed in Writ Petition (PIL) No.2 of 2007. The said order is undisturbed by the Apex Court.

20. In the result, all the petitions are dismissed.

ACTING CHIEF JUSTICE

V.M.KANADE, J.